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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 258.

STATEN ISLAND RAPID TRANSIT RAILWAY COMPANY, a corporation,

Petitioner,

vs.

CLIFFORD BARNEY,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Argument in Opposition to Granting of Writ of Certiorari.

Petitioner contends that the application of the *Federal Safety Appliance Act*, 45 U. S. C., § 1 *et seq.*, in a non-FELA case (*Federal Employers' Liability Act*, 45 U. S. C., § 51 *et seq.*) raises a novel issue. However, this Court has imposed absolute liability in *Fairport, Painesville and Eastern R. Co.* v. *Meredith*, 292 U. S. 589, 78 L. Ed. 1446 (1934); *Shields* v. *Atlantic Coast Line R. R. Co.*, 350 U. S. 318, 100 L. Ed. 364, 76 Sup. Ct. 386 (1956); *Brady* v. *Termi-*

nal Railroad Association of St. Louis, 303 U. S. 10, 82 L. Ed. 614 (1938), all of which cases involved Plaintiffs not entitled to sue under the *Federal Employers' Liability Act, supra.* See also *Mazzucola* v. *Pennsylvania Railroad Company*, 281 F. 2d 267 (3rd Cir. 1960); *Boyer* v. *Atchison, Topeka and Santa Fe Railway Co.*, 34 Ill. App. 2d 330, 181 N. E. 2d 372 (Ill. App. 1962). Therefore, the Court of Appeals acted in accordance with the applicable decisions of this Court. *Barney* v. *Staten Island Rapid Transit Ry.*, 316 F. 2d 38 (3rd Cir. 1963).

The crux of Petitioner's argument is that the Court of Appeals created Federal common law in violation of *Erie R. Co.* v. *Tompkins*, 304 U. S. 64 (1938) by its interpretation and application of the *Safety Appliance Act.* But as Judge, now Justice Harlan pointed out when sitting on the Court of Appeals for the Second Circuit,

> "The Erie doctrine is inapplicable to claims for issues created and governed by Federal law, even if the jurisdiction of the Federal court rests on diversity of citizenship," citing *inter alia Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U. S. 173, 63 S. Ct. 172, 87 L. Ed. 165 (1942). *Siegelman* v. *Cunard White Star*, 221 F. 2d 189 (2nd Cir. 1955).

Professor Moore has analyzed this phase of the *Erie* problem in Moore's Federal Practice, § 0.324 (2nd ed. 1961). Professor Moore points out that the *Erie* case was aimed at questions involving local matters and not at matters governed by the Constitution or by Acts of Congress. Professor Moore further states that where a case founded on diversity presents both Federal and local matters, but the

issues are not inseparably inter-related, Federal law rules a Federal question while applicable state law rules the local matters. See also Moore's Federal Practice, §§ 0.305(3) and 0.323(22).

Respondent recognizes that this case arises under the tort law of New Jersey. While the *Safety Appliance Act* does not create a complete scheme for a right of action, it defines the standard of care required of a railroad in the maintenance of certain safety appliances on railroad cars. The area of interstate commerce affected by the *Safety Appliance Act* was therefore preempted by Congress under its authority to regulate interstate commerce. See *Southern Railway Company* v. *Railroad Commission of Indiana*, 236 U. S. 439, 59 L. Ed. 661 (1915).

Thus we are faced with a Federal statute adopted pursuant to Federal powers granted for the purpose of achieving uniformity among the states. Such uniformity can obviously only be obtained by interpretation of the *Safety Appliance Act* by the U. S. Supreme Court, and certainly not by leaving the interpretation of the Federal statute to each individual state. See *U. S.* v. *Gilbert Associates, Inc.*, 345 U. S. 361 (1953). Interpretation by the Federal courts must be accepted not only by Federal courts sitting in diversity cases, but by state courts as well.

Petitioner, while conceding that New Jersey must apply the *Safety Appliance Act* to determine the standard of care required in this case, apparently argues that each state is at liberty to determine the intent of Congress in applying and interpreting the Act. Such an argument is contrary to the settled rules governing the power of the Federal

courts to construe and apply Federal statutes. *U. S.* v. *Gilbert Associates, Inc.*, 345 U. S. 361 (1953); *Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U. S. 173, 63 Sup. Ct. 172, 87 L. Ed. 165 (1942).

Conclusion.

For the foregoing reasons, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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